



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0352-201204; FRL-9627-6]

Approval and Promulgation of Implementation Plans; North Carolina; 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve in part and conditionally approve in part, the State Implementation Plan (SIP) submission, submitted by the State of North Carolina, through the Department of Environment and Natural Resources (NC DENR), Division of Air Quality (DAQ), as demonstrating that the State meets the state implementation plan (SIP) requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA or the Act) for the 1997 8-hour ozone national ambient air quality standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. North Carolina certified that the North Carolina SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in North Carolina (hereafter referred to as “infrastructure submission”). With the exception of sub-element 110(a)(2)(E)(ii), North Carolina’s infrastructure submission, provided to EPA on December 12, 2007, and clarified in a subsequent submission submitted on June 20, 2008, addresses all the required infrastructure elements for the 1997 8-hour ozone NAAQS.

EFFECTIVE DATE: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2011-0352. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-

8960. The telephone number is (404) 562-9140. Ms. Ward can be reached via electronic mail at ward.nacosta@epa.gov.

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I. Background

Upon promulgation of a new or revised NAAQS, sections 110(a)(1) and (2) of the CAA require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance for that new NAAQS. On July 18, 1997, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations, thus states were required to provide submissions to address sections 110(a)(1) and (2) of the CAA for this new NAAQS. North Carolina provided its infrastructure submission for the 1997 8-hour ozone NAAQS on December 12, 2007, and clarified it in a subsequent submission submitted on June 20, 2008. On March 27, 2008, North Carolina was among other states that received a finding of failure to submit because its infrastructure submission was deemed incomplete for elements

110(a)(2)(C) and (J) for the 1997 8-hour ozone NAAQS by March 1, 2008. *See* 73 FR 16205. Infrastructure elements 110(a)(2)(C) and (J) relate to a SIP addressing changes to its part C prevention of significant deterioration (PSD) permit program as required by the 1997 8-Hour Ozone NAAQS Implementation Rule New Source Review (NSR) Update - Phase 2 Rule (hereafter referred to as the Ozone Implementation NSR Update) recognizing nitrogen oxides (NO_x) a precursor for ozone in 40 CFR 51.166 and 40 CFR 52.21, among other requirements. *See* 70 FR 71612, (November 29, 2005). The June 20, 2008, submission corrected the deficiencies for which the finding of failure to submit was received. On August 10, 2011, EPA finalized approval of North Carolina's June 20, 2008, SIP revision. *See* 76 FR 49313.

EPA has determined that North Carolina's federally-approved SIP includes the provisions necessary from the Ozone Implementation NSR Update, including the addition of NO_x as a precursor to ozone in 40 CFR 51.166 and 40 CFR 52.21 for the 1997 8-hour ozone standard, and thus, has determined that North Carolina has satisfied the requirements for 110(a)(2)(C) and (J). On December 15, 2011, EPA proposed to approve North Carolina's December 12, 2007, infrastructure submission and proposed conditional approval of infrastructure sub-element 110(a)(2)(E)(ii) for the 1997 8-hour ozone NAAQS. *See* 76 FR 77952.¹ CAA section 110(a)(2)(E)(ii) pertains to section 128 State Board requirements which requires at subsection (a)(1) that each SIP shall contain requirements that any board or body which approves permits or

¹ In the December 15, 2011, proposed rule, EPA also proposed, in the alternative, to disapprove North Carolina's infrastructure submission with respect to sub-element 110(a)(2)(E)(ii) (regarding State Boards). EPA proposed disapproval in the alternative for this element to account for the possibility that North Carolina could fail to submit a commitment letter sufficient for EPA to take final action on a conditional approval for this sub-element. Because North Carolina did submit an adequate commitment letter, EPA is proceeding with a conditional approval of sub-element 110(a)(2)(E)(ii) and does not plan to take further action on the proposed disapproval discussed in the December 15, 2011, proposed rule. *See* 76 FR 77952, 77958-77959.

enforcement orders be subject to the described public interest and income restrictions. It further requires at subsection (a)(2) that any board or body, or the head of an executive agency with similar power to approve permits or enforcement orders under the CAA, shall also be subject to conflict of interest disclosure requirements.

On January 11, 2012, North Carolina submitted a letter of commitment to EPA to adopt specific enforceable measures related to both 128(a)(1) and 128(a)(2) to address current deficiencies in the North Carolina SIP as outlined in EPA's December 15, 2011, proposed rulemaking. This letter of commitment meets the requirements of section 110(k)(4) of the CAA, 42 U.S.C. § 7410(k)(4). Failure to adopt these provisions into the North Carolina SIP within one year (by February 6, 2013) will result in today's conditional approval becoming a disapproval. North Carolina's January 11, 2012, letter can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2011-0352. A summary of the background for today's final action is provided below. See EPA's December 15, 2011, proposed rulemaking at 76 FR 77952 for more detail.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's

existing SIP already contains. In the case of the 1997 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS. As already mentioned, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this final rulemaking are listed below² and in EPA’s October 2, 2007, memorandum entitled “Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards.”

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.³
- 110(a)(2)(D): Interstate transport.⁴

² Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today’s final rulemaking does not address infrastructure elements related to section 110(a)(2)(I) but does provide detail on how North Carolina’s SIP addresses 110(a)(2)(C).

³ This rulemaking only addresses requirements for this element as they relate to attainment areas.

⁴ Today’s proposed rule does not address element 110(a)(2)(D)(i) (Interstate Transport) for the 1997 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by North Carolina consistent with the Clean Air Interstate Rule (CAIR). On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina v. EPA*, 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve North Carolina’s SIP revision, which was submitted to comply with CAIR. *See* 72 FR 56914 (October 5, 2007). In response to the remand of

- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.⁵
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

II. This Action

EPA is taking final action to approve North Carolina's infrastructure submission as demonstrating that the State meets the applicable requirements of sections 110(a)(1) and (2) of the CAA for the 1997 8-hour ozone NAAQS, with the exception of CAA section 110(a)(2)(E)(ii). EPA is taking final action to conditionally approve sub-element 110(a)(2)(E)(ii). Section 110(a) of the CAA requires that each state adopt and submit a SIP for

CAIR, EPA has recently finalized a new rule to address the interstate transport of NO_x and SO_x in the eastern United States. *See* 76 FR 48208 (August 8, 2011) ("the Transport Rule"). This rule was recently stayed by the D.C. Circuit Court of Appeals. EPA's action on element 110(a)(2)(D)(i) will be addressed in a separate action.

⁵ This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM_{2.5} National Ambient Air Quality Standards," but as mentioned above is not relevant to today's proposed rulemaking.

the implementation, maintenance, and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an “infrastructure” SIP. North Carolina, through DAQ, certified that the North Carolina SIP contains provisions that ensure the 1997 8-hour ozone NAAQS is implemented, enforced, and maintained in North Carolina. EPA received no adverse comments on its December 15, 2011, proposed approval of North Carolina’s December 12, 2007, infrastructure submission and proposed conditional approval of 110(a)(2)(E)(ii).

North Carolina’s infrastructure submission, provided to EPA on December 12, 2007, and clarified on June 20, 2008, addressed all the required infrastructure elements for the 1997 8-hour ozone NAAQS, with the exception of CAA section 110(a)(2)(E)(ii). EPA has determined that North Carolina’s December 12, 2007 submission, as clarified through the State’s June 20, 2008 submission, is consistent with section 110 of the CAA, with the exception of CAA section 110(a)(2)(E)(ii).

On January 11, 2012, North Carolina submitted a letter of commitment to EPA to adopt specific enforceable measures related to both CAA sections 128(a)(1) and 128(a)(2) to address the current deficiencies in the North Carolina SIP related to CAA section 110(a)(2)(E)(ii) as outlined in EPA’s December 15, 2011, proposed rulemaking. As a result of North Carolina’s January 11, 2012, submission, EPA has determined that conditional approval is appropriate because the State has explicitly committed to address current deficiencies in the North Carolina SIP related to sub-element 110(a)(2)(E)(ii) consistent with the requirements of CAA section 110(k)(4).

EPA is conditionally approving the January 11, 2012, submittal with respect to the CAA requirement of sub-element 110(a)(2)(E)(ii). North Carolina must submit to EPA by February 6,

2013, SIP revisions adopting specific enforceable measures related to both CAA sections 128(a)(1) and 128(a)(2) as described in the State's letter of commitment described above. If the State fails to actually submit these revisions by February 6, 2013, today's conditional approval will automatically become a disapproval on that date and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the Federal Implementation Plan requirement under section 110(c). However, if the State meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, today's conditionally approved submittal will also be disapproved at that time. If EPA approves the new submittal, North Carolina's infrastructure SIP will be fully approved in its entirety and replace the conditionally approved element in the SIP.

III. Final Action

EPA is taking final action to approve North Carolina's December 12, 2007, submission for the 1997 8-hour ozone NAAQS and conditionally approve North Carolina's January 11, 2012, submission because these submissions are consistent with section 110 of the CAA. NC DENR has addressed the elements of the CAA 110(a)(1) and (2) SIP requirements pursuant to EPA's October 2, 2007, guidance to ensure that the 1997 8-hour ozone NAAQS are implemented, enforced, and maintained in North Carolina.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR

52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule

or action. This action may not be challenged later in proceedings to enforce its requirements.

(*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 27, 2012

A. Stanley Meiburg

Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II —North Carolina

2. Section 52.1770(e), is amended by adding a new entry “North Carolina 110(a)(1) and (2)

Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality

Standards” at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-Approved North Carolina Non-regulatory provisions

Provision	State effective date	EPA approval date	Federal Register citation
**	**	**	*
North Carolina 110(a)(1) and (2) Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standards	12/12/2007	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]

3. Section 52.1773 is added to read as follows:

§ 52.1773 Conditional approval.

Conditional Approval—Submittal from the State of North Carolina, through the Department of Environment and Natural Resources (NC DENR), Division of Air Quality, dated December 12, 2007, to address the Clean Air Act (CAA) infrastructure requirements for the 1997 ozone National Ambient Air Quality Standards. On January 11, 2012, NC DENR supplemented their December 12, 2007, submission with a commitment to address the requirements of CAA section 110(a)(2)(E)(ii) of the CAA which requires state compliance with section 128 of the CAA. EPA is conditionally approving North Carolina's submittal with respect to CAA section 110(a)(2)(E)(ii).

[FR Doc. 2012-2602 Filed 02/03/2012 at 8:45 am; Publication Date: 02/06/2012]